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**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT**, made as of this 26th day of August, 1994, by and between GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation (hereinafter called "Seller") and SOUTHERN LEASING CORPORATION, a Delaware corporation (hereinafter called "Buyer").

**WITNESSETH**

**WHEREAS**, Seller desires to sell and Buyer desires to purchase Twenty-Five (25) GP-40-2 Locomotives (the "Units") shown on Exhibit "A" upon the terms and conditions hereinafter set forth:

**NOW, THEREFORE**, in consideration of the mutual promises and the terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Sale of Equipment. Seller agrees to sell to Buyer on the terms and conditions set forth herein the Units.

Seller shall, upon closing, provide to Buyer an executed bill of sale substantially in the form attached hereto as Exhibit B ("Seller's Bill of Sale"), conveying all of its right, title and interest in and to the Units.

2. Price and Closing. Buyer agrees to pay to Seller at closing (the "Closing") Seven Million, One Hundred and Seventy-One Thousand Dollars and No Cents (\$7,171,000) (the "Purchase Price") as payment in full for the Units, based on a per Unit purchase price of \$286,840. The Closing will occur on January 3, 1995; provided that upon five days' notice, Seller, in its sole discretion, may require the Closing to occur on December 30, 1994 (the date upon which the Closing actually occurs is hereinafter referred to as the "Closing Date"). On the date this Agreement is executed (the "Deposit Payment Date"), the Buyer agrees to pay Seller a non-refundable deposit (the "Deposit") of Seven Hundred Thousand Dollars (\$700,000), which shall be credited towards the Purchase Price; provided, however, the Deposit will be returned to Buyer if (a) the Closing shall not occur because of a material breach of this Agreement by Seller or (b) the Closing shall not occur by January 10, 1995. The Purchase Price shall be reduced by \$286,840 for each Unit (i) excluded from this Agreement by Seller pursuant to Section 4 of this Agreement or (ii) that Seller is unable to deliver to Buyer by the Closing Date.

Payment of the Deposit and the Purchase Price shall be made by the Buyer electronically transferring in immediately available funds to the Seller the Deposit on the Deposit Payment Date and the balance due on the Purchase Price on the Closing Date, to the following account:

GE Capital Corporation  
c/o GECC/GPSF Depository Account  
Banker's Trust Company  
New York, New York  
Account No.: 50-205-776  
ABA No.: 0210-0103-3  
Ref: The purchase of BN (St. Louis - S.F.) Locomotives

3. Title and Risk of Loss. Title and risk of loss to the Units shall pass to Buyer upon the Closing. Buyer shall be deemed to have taken delivery of the Units in Missouri on the Closing Date.

4. Condition of Units and Delivery. The Buyer is purchasing the Units "AS IS", "WHERE IS." Buyer shall have the right to inspect the Units prior to closing, and may exclude from this Agreement any Unit or Units which are in an unsatisfactory condition, but Buyer must give Seller notice of the Unit or Units excluded at least 15 days prior to the Closing Date.

5. Representations and Warranties by Seller. Seller represents and warrants, as of the Closing Date, that it is the lawful owner of the Units with good, indefeasible, valid and marketable title to the Units, it is duly authorized to sell the Units, and that, except as previously disclosed, the Units are subject to no pledges, liens, encumbrances, security interests, leases, subleases, management agreements or rights of third parties of any kind excepting and subject to any liens for personal property taxes not yet due and payable. Seller agrees to indemnify Buyer and hold it harmless from and against any and all loss, cost, damage or expense (including reasonable attorneys' fees) it may suffer as a result of any claims, demands, suits, actions, causes of action, recoveries or judgments arising out of any claim of title to the Units or any lien thereon in favor of any creditor (including judgment creditors) of Seller and any affiliate, officer, employee or shareholder of Seller.

Seller represents and warrants that it is a corporation duly organized and validly existing in the State of New York. Seller has duly authorized the execution, delivery and performance of this Agreement and Seller's Bill of Sale by all necessary corporate action and this Agreement and Seller's Bill of Sale constitute valid and binding obligations of Seller, enforceable according to their terms.

6. Survival of Warranties. The representations and warranties expressed and implied herein shall survive the execution and delivery of the Bill of Sale.

7. Liability and Indemnity. Buyer agrees to assume and hereby does assume, as between itself and Seller, any and all liability for injury to or death of persons and loss or destruction of or damage to property in any manner arising from or growing out of the use, operation or condition of or on the Units, or any part thereof, after the Closing Date, however

such injury, death, loss, destruction or damage may occur or be caused and agrees to indemnify, defend and hold the Seller harmless from any judgments, settlements, costs and expenses (including attorneys' fees) arising therefrom. Seller agrees to indemnify, defend and hold the buyer harmless from any judgments, settlements, costs and expenses (including reasonable attorneys' fees) arising from or growing out of the use, operation or condition of or on the Units prior to the Closing Date.

8. Tax and General Indemnities. Buyer agrees to pay and hold harmless the Seller from any liability for any and all state, municipal and local license fees and sales taxes, imposed upon, incurred by or asserted against Seller solely as a consequence of the sale of the Units to Buyer; and from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions and suits resulting therefrom and imposed upon, incurred by or asserted against Seller as a consequence of the sale of the Units to, or the ownership, possession, operation or use of the Units by, Buyer. Buyer shall have no obligation for any taxes other than those expressly provided for herein including any taxes based on, or measured by, the net income of Seller.

9. Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement to purchase the Units from Seller are subject to the satisfaction of the following conditions on or prior to the Closing Date.

9.1 Representations and Warranties. The representations and warranties of Seller contained in paragraphs 5, 11 and 12 of this Agreement shall be true and correct in all material respects on the date of execution of this Agreement and on the Closing Date as though made on and as of the Closing Date.

9.2 Delivery of Documents. At or prior to the Closing Date, Seller shall have delivered or shall have caused to be delivered to Buyer the following instruments and documents:

- a) Seller's Bill of Sale;
- b) An executed Consent from Burlington Northern Railroad Company as Lessee to Assignment of Lease and Sale of the Units to Buyer; and
- c) Such other documents and instruments as Buyer shall have reasonably requested as to the accuracy and validity of or compliance with all representations, warranties and covenants made by Seller in this Agreement and the satisfaction of all conditions contained herein.

10. Conditions Precedent to Seller's Obligations. The obligations of Seller under this Agreement to sell the Units to Buyer are subject to the satisfaction of the following conditions on or prior to the Closing Date:

10.1 Representations and Warranties. The representations and warranties of Buyer contained in paragraphs 11 and 12 of this Agreement shall be true and correct in all material respects on the date of execution of this Agreement and on the Closing Date as though made on and as of the Closing Date.

10.2 Performance of Obligations of Buyer. Buyer shall electronically transfer to Seller the amount of the Deposit on the Deposit Payment Date and the balance due on the Purchase Price on or by the Closing Date as provided in paragraph 2 of this Agreement.

10.3 Delivery of Documents. At or prior to the Closing Date, Buyer shall have delivered or shall have caused to be delivered to Seller the following instruments and documents:

- a) Lease Assignment and Assumption Agreement, executed by a duly authorized representative or officer of Buyer (the "Lease Assignment"); and
- b) Such other documents and instruments as Seller shall have reasonably requested (i) as to the accuracy and validity of or compliance with all representations, warranties and covenants made by Buyer in this Agreement and the Lease Assignment and the satisfaction of all conditions contained herein or (ii) as necessary for the consummation of the transactions contemplated herein.

11. No Violation or Breach. Seller and Buyer mutually represent each to the other that the performance of this Agreement by it, including any preconditions, surviving warranties or representations, is not in violation of any laws, statutes, ordinances or state or federal regulations or any court order or administrative order or ruling. Seller and Buyer mutually represent that no consent, approval, authorization or order of any court or governmental authority or third party is required in connection with the execution and delivery of this Agreement or the consummation of any transactions contemplated hereby.

12. No Restriction on Assignment by Seller. Nothing in this Agreement shall prohibit the Seller from assigning, selling, transferring or otherwise conveying its right, title and interest in its rights and obligations under this Agreement, including Seller's right to assign the proceeds received under this Agreement to a third party in order to effect a "like-kind" exchange under Section 1031 of The Internal Revenue Code of 1986, as amended and in effect on the date hereof. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Seller and its successors and assigns.

13. Authority of Parties. Seller and Buyer each represent that the execution and delivery of this Agreement and the consummation of this transaction has been duly and effectively authorized by all necessary corporate action. On the Closing Date, the obligations described in this Agreement will be legal, valid and binding obligations of the parties,

enforceable in accordance with the terms described in the Agreement on behalf of Seller and buyer.

14. Time. Time is of the essence in this Agreement and every provision contained herein.

15. Notices. Any notice given or required to be given hereunder shall be sufficient if sent by certified mail, return receipt requested, to the address set forth below or at such other address as the parties shall have specified in writing:

If to Seller: General Electric Capital Corporation  
1600 Summer Street  
Stamford, Connecticut 06927  
ATTN: Mr. D. L. Eakin, Manager - Operations

If to Buyer: Southern Leasing Corporation  
1055 Broadway  
Suite 990  
Kansas City, Missouri 64105-1599  
ATTN: Mr. Larry D. Nicotra, President

16. Entire Agreement/Amendment. This Agreement and the Lease Assignment constitutes the entire understanding of the agreement between the parties hereto with respect to the sale of the Units. This Agreement may not be amended, modified or changed except by instruments in writing signed by all the parties hereto.

17. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Connecticut.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

19. Severability. If any paragraph, clause or part of this Agreement is found unenforceable, such finding shall not affect the remainder of this Agreement.

20. Headings. The title and headings of the sections hereof are solely for means of reference and are not intended to modify, explain or place any construction on any of the provisions of this Agreement

21. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be entered into as of the day and year first above written.

GENERAL ELECTRIC CAPITAL  
CORPORATION

SOUTHERN LEASING CORPORATION

By: W. Eakin

By: Larry D. Nicotra

Name: D. L. Eakin

Name: LARRY D. NICOTRA

Title: Mgr - OPERATIONS

Title: PRESIDENT

APPROVED AS TO FORM

A.P. Bay 4/jmr

**CERTIFICATION**

I, LOUIS E. GITOMER, have compared this copy to the original Agreement of Purchase and Sale, dated as of August 26, 1994, and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in dark ink, appearing to read "L. E. Gitomer", is written over a horizontal line.

Louis E. Gitomer

October 15, 1996